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January 19, 2010

Mr. Jim King  
Councilman, Ward 6  
Chair, CACMP Committee  
City of Marietta  
P.O. Box 609  
Marietta, GA 30061

**LEGAL OPINION REGARDING EXPENDITURES**  
**FOR MARIETTA PARK BOND PROJECTS**

Dear Jim:

The Parks Committee has requested an opinion regarding expenditures for the proposed Park Bond Improvements approved by the voters for the City of Marietta. By way of background, the Marietta City Council, on September 9, 2009, approved what has been designated as "8-20-09 Version" of the Park Bond Proposed Expenditures, a copy of which is attached hereto and is also attached to the Motion creating the Citizens Park Bond Committee. The question then becomes how rigid or flexible is the list approved by the Marietta City Council and then approved by the Marietta city voters. In answering this question, I have reviewed what I would consider the governing authority in the State of Georgia which is an opinion issued by Cobb Superior Court Judge Lark Ingram in the case of Butch Thompson v. Cobb County School District, a copy of which is attached. In that case, the Petitioner sought to void an expenditure by the Cobb County School District under what was called SPLOST II in which the School District proposed to purchase a laptop computer for every student enrolled in the county school system. However, in the SPLOST II brochure and memorandum prepared by the School District and furnished to the voters, there was no item listed on the proposed project list regarding the laptop computers for students. In fact, the School District, following the vote on the referendum, proposed to un-fund certain projects which were approved by the voters and convert these dollars to expenditures for student laptop computers. The Court held that the proposed expenditures for student laptops would be illegal and issued an injunction against the School District prohibiting such expenditures. In so holding, the Court stated:

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(quoting from the opinion)

18. This Court concludes that Respondents could only depart from the technology initiatives specified and promised by SPLOST II if circumstances arose which dictated that the technology initiatives which initially seemed feasible were no longer feasible. Dickey, 262 Ga. at 456.

22. A subsequent preference for a policy or technology initiative over one promised initially by this SPLOST referendum does not excuse Respondents' departure from the technology initiatives promised by SPLOST II and thus SPLOST II proceeds cannot be used for another purpose.

23. Because the original and promised technology initiatives remain feasible of completion, this Court concludes that Respondents are abusing their discretion when they depart substantially and materially from completing SPLOST II's technology initiatives as promised before the referendum was held for the SPLOST vote.

29. Cobb County citizens have a reasonable expectation, established by Georgia law, that SPLOSTs proceeds are distributed for the sole purposes promised by elected officials to win public approval of the SPLOST.

30. Respondents cannot abandon initiatives promised by SPLOST II. Respondents have a legal obligation to resist comprehensive, post hoc "re-budgeting" of SPLOST proceeds.

The School District appealed this decision to the Supreme Court of Georgia, which affirmed the decision of Judge Lark Ingram.

As a general rule, the Parks Committee and the City Council should follow the "8-20-09 Version." However, at the bottom of the proposed Project Expenditure List, the following wording appears:

The allocations of funds for project components are estimates and may vary as planning, engineering, site improvements, etc. progress. Surpluses from over-estimated projects, including interest received on bond funds of such projects, shall be used first to complete under-estimated projects and all remaining funds received from interest and over-estimated projects shall be used first to complete under-estimated projects and all remaining funds received from interest and over-estimated projects shall be used for other projects or improvements which the City Council may deem necessary and which are encompassed within the language of the statement of purpose in the election notice.

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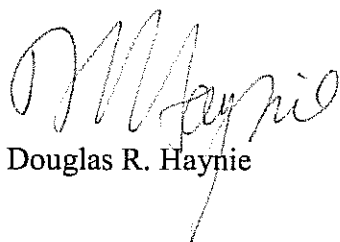
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In summary, it is my opinion that the Parks Committee and the Mayor and Council should expend the Bond Funds as set forth in the "8-20-09 Version" with the proviso that there is a small amount of flexibility as set forth in the language above. In my view, any variances from the "8-20-09 Version" should meet the following two criteria:

1. Any variance must be minimal.
2. Any variance must be justifiable.

Please contact me regarding any questions which you might have.

Thanks,

A handwritten signature in cursive script, appearing to read "D. Haynie", is written over the printed name.

Douglas R. Haynie